IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JACY LEE DOUGLAS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12036 Trial Court No. 3PA-13-514 CR MEMORANDUM OPINION No. 6241 — September 23, 2015

Appeal from the Superior Court, Third Judicial District, Palmer, Vanessa White, Judge.

Appearances: Krista Maciolek, Law Offices of Krista Maciolek, Inc., Palmer, for the Appellant. William M. Perry, Assistant District Attorney, Palmer, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Kossler, Judges.

Judge ALLARD.

Jacy Lee Douglas was convicted of third-degree assault against his stepfather. After finding that Douglas was a worst offender, the superior court sentenced him to the maximum 5-year term. Douglas argues that the court erred in finding him a worst offender, and that his sentence of 5 years to serve is excessive. For the reasons explained here, we reject those claims and affirm Douglas's sentence.

Facts and proceedings

At about midnight on March 2, 2013, after drinking heavily, Douglas assaulted his stepfather, Roy White, by punching him repeatedly in the face. White's injuries required approximately forty stitches, and he was left with obvious scarring to his face. When the troopers contacted Douglas shortly after the assault, Douglas reportedly lunged at them and they used a Taser to subdue him. The State charged Douglas with second-degree assault,[1] third-degree assault,[2] fourth-degree assault,[3] and resisting arrest.[4]

These charges were resolved in a plea agreement in which Douglas pleaded guilty to third-degree assault and the State dismissed the other charges. Because this was Douglas's fourth felony conviction, he faced a presumptive sentencing range of 3 to 5 years. In addition, Douglas admitted the statutory aggravating factor AS 2.55.-155(c)(31) (that his criminal history included five or more Class A misdemeanors).

At Douglas's sentencing, the State asked the court to find Douglas a "worst offender" based on his criminal history, his past failures at rehabilitation, and the seriousness of the assault in this case, and to sentence him to the maximum 5-year term.

The defense attorney agreed that a flat-time sentence was appropriate given Douglas's generally poor performance on probation. But the attorney urged the court to impose a sentence at the bottom of the presumptive range in light of the stepfather's long history of abusing Douglas and his mother. Douglas's mother recounted some of that history at the sentencing hearing, telling the court that the stepfather had, among

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[1] AS 11.41.210(a)(2).

[2] AS 11.41.220(a)(1)(A).

[3] AS 11.41.230(a)(1).

[4] AS 11.56.700(a)(3).

other things, choked Douglas, beaten him with a cane, and killed his pet dogs for no reason.

The superior court accepted the unrefuted evidence that Douglas was "viciously abused" by his stepfather as a child. The court further found that Douglas was "a victim of his circumstance to a great degree, in terms of ... growing up in a home where alcohol was abused and where physical abuse was a common occurrence." But the court also found that Douglas had, tragically, "become his stepfather," because he had engaged in "a repeated pattern of violence [against] the people he cares about the most."

The court found three statutory aggravating factors in Douglas's case, all related to his criminal history — five or more Class A misdemeanor convictions,[5] three or more felony convictions,[6] and a criminal history that included repeated instances of assaultive behavior.[7] The court also found that the injuries Douglas inflicted in this case might have supported a conviction for the more serious offense of second-degree assault.

The court further found that Douglas was addicted to alcohol and had demonstrated an inability to control his rage after he drank. The court observed that Douglas's inability to control his impulses was reflected in his "extremely poor" performance on probation and parole.

Based on these findings, the court concluded that Douglas was a "worst offender" as that term is defined in Alaska sentencing cases[8] and that isolating Douglas

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[5] AS 12.55.155(c)(31).

[6] AS 12.55.155(c)(15).

[7] AS 12.55.155(c)(8).

[8] *See, e.g.*, *State v. Wortham*, 537 P.2d 1117, 1120 (Alaska 1975); *Napayonak v. State*, 793 P.2d 1059, 1062 (Alaska App. 1990).

was necessary to protect the public. The court then sentenced Douglas to the maximum term of 5 years to serve.

Why we conclude that Douglas's 5-year sentence is not clearly mistaken

Douglas argues that the sentencing court was clearly mistaken in characterizing Douglas as a worst offender and sentencing him to the 5-year maximum sentence.[9] Douglas contends that the court placed too little emphasis on his positive aspects — specifically, his close relationship with his mother, ex-wife, and daughter, and the continuing support of his employer. Douglas also argues that his sentence does not adequately reflect that the victim of his assault was someone who had viciously abused him as a child.

As a general matter, "maximum sentences should not be imposed without some foundation for characterizing a defendant as the worst type of offender."[10] A "worst offender" finding can be based on the defendant's current offense or the defendant's criminal history or both.[11]

Here, the sentencing court found Douglas to be a worst offender based on his assaultive history and the severity of the assault in this case. The court found that, in terms of the physical injury to the victim, Douglas's assault might have supported a conviction for second-degree assault, a class B felony that would have subjected Douglas to a presumptive sentencing range of 6 to 10 years.[12] The court also found that Douglas had a serious alcohol problem, and that he had demonstrated an inability to abide by the

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[9] *See* AS 12.55.125(e) (except for sexual felonies, the maximum term of imprisonment that may be imposed for a class C felony is 5 years).

[10] *Galaktionoff v. State*, 486 P.2d 919, 924 (Alaska 1971).

[11] *Wortham*, 537 P.2d at 1120.

[12] AS 12.55.125(d)(4); AS 11.41.210(b).

terms of his probation, or to control his rage and his assaultive behavior, when he drank. Lastly, the court found that Douglas's other felony convictions — for burglary and second-degree sexual abuse of a minor — also demonstrated dangerous and antisocial propensities.

Douglas has not challenged any of these findings, and they are well-supported by the record. The State also presented evidence that Douglas had ten prior criminal convictions, three of them felonies. Those convictions included alcohol-related offenses and multiple misdemeanor assaults. In addition to his felony convictions for burglary and second-degree sexual abuse of a minor, Douglas was convicted of felony assault, interfering with a report of domestic violence, and violating the conditions of his release for strangling the mother of his child to the point where she defecated on herself. Douglas received a composite sentence of more than 7 years for those offenses and was incarcerated for close to all of that time because of his repeated violations of probation. Given this record, we conclude that the court did not err in finding Douglas a worst offender.

In determining whether the maximum 5-year sentence was warranted, the sentencing court considered the *Chaney* criteria of rehabilitation, isolation, deterrence of others, community condemnation, and affirmation of societal norms.[13] The court placed the greatest weight on the sentencing goal of isolation, finding that Douglas's history of assaultive conduct, his alcohol addiction, and his demonstrated inability to change his behavior when given the opportunity to do so made Douglas a continuing danger to the public. Because of Douglas's repeated past failures on probation and parole, the court declined to give any significant weight to Douglas's prospects for rehabilitation.

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[13] *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970); *see also* AS 12.55.005 (codifying the *Chaney* criteria).

Contrary to Douglas's claim, the court gave serious consideration in its sentencing remarks to the defense evidence that Douglas had been "repeatedly and viciously abused" by his stepfather (the victim of the assault) and had witnessed the stepfather abuse his mother and other loved ones when he was a child. But the court ultimately concluded that Douglas had, tragically, become an abuser himself who, like his stepfather, engaged in "a repeated pattern of violence [against] the people he cares about the most."

Douglas claims that the court placed too much emphasis on his criminal history and the seriousness of his assault and too little emphasis on his rehabilitative prospects and the other evidence he offered in mitigation. But as Alaska courts have repeatedly emphasized, sentencing judges have broad discretion to determine the relative importance of the *Chaney* sentencing criteria in a particular case,[14] and we will affirm that judgment on appeal unless it is clearly mistaken.[15]

We conclude that, given Douglas's criminal history, his poor performance on probation and parole, his continuing alcohol addiction, and the serious nature of the injuries he inflicted in this case, the sentencing court was not clearly mistaken in emphasizing the *Chaney* goal of isolation and in imposing the maximum 5-year sentence for Douglas's offense.

Conclusion

We AFFIRM the judgment of the superior court.

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[14] *See LaLonde v. State*, 614 P.2d 808, 811 (Alaska 1980); *Asitonia v. State*, 508 P.2d 1023, 1026 (Alaska 1973); *Evan v. State*, 899 P.2d 926, 931 (Alaska App. 1995); *Hawley v. State*, 648 P.2d 1035, 1038 (Alaska App. 1982); *see also Juneby v. State*, 641 P.2d 823, 835 & n. 21, 838 (Alaska App. 1982), *modified on rehearing*, 665 P.2d 30, 32-33 (Alaska App. 1983).

[15] *See McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).